THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION NO13236 of 2005

DATED.03-10-2007

BETWEEN:

G.Rajaiah son of M.Mallaiah

…Petitioner

VS.

The District & Sessions Judge, Karimnagar and another

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

AND

THE HONOURABLE SRI JUSTICE S. ANANDA REDDY

WRIT PETITION NOS.13236 of 2005

ORAL ORDER(Per GR,J)

The order of the 1st respondent dated.08-06-2005 declaring the earlier grant of annual grade incremental benefits to the petitioner as erroneous and contrary to the provisions of the Revised Scales of Pay of 1999 issued in G.O. (P)No.114, Finance & Planning (FW.PC) Department and in particular para.12 thereof and consequently directing the 2nd respondent to refix the petitioner's pay as Full Time Masalchi of the 2nd respondent-Court and directing recovery of excess amount paid to the petitioner in easy instalments, is challenged in this writ petition.

The petitioner initially entered service in 1980 as Part-time Masalchi. He was working as a part time Masalchi since 1986 in the 2nd respondent-Court. He was granted the pay scale of Rs.1375 to 2375 in 1998 pursuant to the Government's Circular Memo dated.09-07-1997. The pay scale benefit was granted to him w.e.f 01-07-1993 and he was also paid Rs.4841/- towards arrears on account of the revision of the pay scales. The pay scale was revised to Rs.2550-4550 under the Andhra Pradesh Revised Scales of Pay Rules,1999 w.e.f.01-04-1999.

Under the 1999 pay scales the petitioner was also granted three annual grade increments from Rs.2700/- to 2750/- on 01-07-1999, Rs.2750/- to Rs.2870/- on 01-07-2000 and Rs.2870/- to Rs.2970/- on 01-07-2001. Further increments from 2001-2004 were neither claimed nor paid.

The petitioner as a part time Masalchi belongs to the contingent establishment and not the regular service either Last Grade or otherwise.

Para.12 of the 1999 revised pay scales in G.O(P) No.1144 dated.11-08-1999 disentitles the extension of these revised pay scales to contingent establishment or part time establishment. Since the petitioner as a Masalchi was in the contingent establishment, he was not entitled to the 1999 revised pay scales particularly in view of para.12 of G.O(P) No.1144. The fixation of the petitioner's pay in the revised pay scales of Rs.2550/- to 4550/- or the grant of the three annual incremental benefits was therefore unauthorized. In the above circumstances the impugned order came to be issued.

In the orders of the State Government in G.O.Ms.Nos.233 and 344 Finance and Planning Department dated.19-08-1983 and 13-11-1989 respectively, orders were issued for conversion into regular government posts in the last grade service of Full Time Masalchies subject to certain conditions. One of the conditions is that they should have completed 10 years of service as on 01-06-1991. The petitioner did not have the requisite length of service and was not thus entitled to regularization or consideration as a last grade employee. Since he continued to be in the contingent establishment, he was not entitled to the benefits of the 1999 pay revision nor the incremental benefits thereon. In the circumstances the impugned order came to be passed.

The petitioner has no substantive contention as regards his entitlement to or any defence to the merits of the impugned order. He merely contends that impugned order has been issued without notice or opportunity. It is a settled principle that strict adherence to principles of natural justice is not required where no substantive prejudice is caused by non-compliance therewith nor where a person complaining of non-compliance of the principles of natural justice has no substantive defence on merits against an order passed in technical violation of the *Audi Alteram Partem* principle.

Since the petitioner is disentitled either to the pay scale of Rs.2550 to 4550 or the incremental benefits sanctioned by the authority and drawn by him, the recovery by the impugned order is unimpeachable on merits. The 1st respondent has directed that the recovery be made in easy instalments (so as not to traumatize the petitioner unnecessarily having regard to the fact that he is a contingent employee).

On the analysis above there are no merits. The writ petition is accordingly dismissed. No order as to costs.

GODA RAGHURAM,J

3RD OCTOBER,2007
PVSN/TSNR

S.ANANDA REDDY,J